

105 KAR 1:149. Quasi-governmental employer cessation window.

RELATES TO: KRS 18A.205, 18A.225, 61.510 to 61.705, 26 U.S.C. 401, 402, 403

STATUTORY AUTHORITY: KRS 61.522(9), 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705. KRS 61.522(6) authorizes certain quasi-governmental employers in the Kentucky Employees Retirement System to cease participation of its nonhazardous employees under the provisions and requirements of KRS 61.522(8). The ceased quasi-governmental employer shall pay the full actuarial cost of benefits accrued by its current and former nonhazardous employees through June 30, 2021, except as provided by KRS 61.522(8)(g)4. KRS 61.522(9) requires the Board to promulgate administrative regulations to administer the provisions of the statute. This administrative regulation establishes the temporary procedures and requirements for quasi-governmental employer cessation from participation in the Kentucky Employees Retirement System pursuant to KRS 61.522.

Section 1. Definitions. (1) "Alternative retirement program" means a plan provided by a ceased quasi-governmental employer, which meets the qualification requirements of 26 U.S.C. 401(a) or 26 U.S.C. 403(b), is eligible to receive direct trustee-to-trustee transfers of pre-tax and post-tax contributions, and does not include a defined benefit plan.

(2) "Ceased employer" means a quasi-governmental employer who, on or after April 1, 2020, but prior to May 1, 2021, or in the case of university or community college employers it shall be prior to January 1, 2021, submits a resolution to cease participation in Kentucky Employees Retirement System ("KERS"), which is accepted by the Board on or before June 30, 2021.

(3) "Employer", for the purposes of this administrative regulation, means a quasi-governmental employer including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, the Kentucky Higher Education Student Loan Corporation, and any other agency otherwise eligible to voluntarily cease participating in KERS pursuant to KRS 61.522.

(4) "Employer election" means an election by ceasing employers set forth in the resolution to cease participation in KERS regarding whether nonhazardous employees hired prior to June 30, 2021, who began participating in KERS prior to January 1, 2014, will continue to participate in KERS after June 30, 2021. Nonhazardous employees of employers who do not elect for their employees to continue participating in KERS will not accrue additional service credit or benefits with KERS through the ceased employer after June 30, 2021.

(5) "Nonhazardous employee" means a regular full-time employee participating in KERS in a position other than a position classified as hazardous by the board pursuant to KRS 61.592.

Section 2. (1) An employer may request an estimate of the actuarial cost of ceasing participation in KERS of its nonhazardous employees prior to December 31, 2019. The request shall be made by completing the Form 7726, Request for Estimated Cost of Voluntary Cessation from KERS under KRS 61.522(8).

(2) Kentucky Retirement Systems (hereafter "Systems") shall provide the estimate of the cost within sixty (60) days of receipt of the Form 7726, however, no estimate shall be required to be provided prior to January 31, 2020.

(3) Systems shall provide the estimate of the cost based on the information currently in its database and projecting the service and creditable compensation of all nonhazardous employees as if they remain employed in a regular full-time position through June 30, 2020.

(4) The estimated actuarial cost of ceasing participation shall not be binding on the Systems.

(5) The employer shall not rely on the estimated actuarial cost of ceasing participation.

(6) Systems shall notify the employer of the administrative cost to process the Form 7726. The administrative cost shall be calculated as follows:

(a) If the number of employees and former employees to be submitted to the actuary for purposes of determining the estimated actuarial cost of cessation equals one (1) to 100 employees, the administrative cost shall be \$1,500.

(b) If the number of employees and former employees to be submitted to the actuary for purposes of determining the estimated actuarial cost of cessation equals 101 or more employees, the administrative cost shall be \$4,000.

(7) Systems shall process the Form 7726 after the employer has remitted its payment for the administrative cost.

Section 3. (1) The governing body of an employer seeking to cease participation in KERS through KRS 61.522(8) shall pass a resolution to cease participation and submit the resolution to the board on or after April 1, 2020, but prior to May 1, 2021, or January 1, 2021, in the case of university or community college employers.

(2) The resolution shall contain the following statements:

(a) That the employer has decided to voluntarily cease participation in KERS;

(b) The employer election and acknowledgement as to whether nonhazardous employees hired prior to June 30, 2021, who began participating in the Systems prior to January 1, 2014, will, as a result of the employer election, either continue to participate or cease earning service credit and benefits after June 30, 2021;

(c) That the employer acknowledges it is unable to rescind the resolution to cease participation after April 30, 2021, or after December 31, 2020 in the case of university or community college employers;

(d) That the employer acknowledges it is subject to the requirements and restrictions of KRS 61.522 and this administrative regulation;

(e) That the employer acknowledges that in order to cease participation in KERS pursuant to KRS 61.522(8), the employer shall pay the actuarial cost of ceasing participation and all administrative costs associated therewith;

(f) That the employer agrees to cooperate with the Systems to educate its employees about the effect of cessation and the employer election on the employees' retirement accounts and the employees' options regarding their retirement accounts;

(g) That the employer shall not mandate, force, or require its employees to take a refund of their accumulated account balance as defined by KRS 61.510(41), or retaliate against its employees who chose not to take refunds of their accumulated account balance as defined in KRS 61.510(41); and

(h) That the employer shall hold the Commonwealth and the Systems, including board members and employees of the Systems, harmless from damages, attorney's fees and costs from legal claims for any cause of action brought by any member or retired member of the ceasing employer related to the cessation of the employer.

(3) The Board shall accept the resolution on or before June 30, 2021, in order for the employer to cease participation.

(4) If a resolution to cease participation in the KERS is not received by the board prior to May 1, 2021, or January 1, 2021 in the case of university or community college employers, the employer shall continue to participate in the KERS and pay the full actuarially determined contributions for fiscal years occurring on or after July 1, 2021.

Section 4. (1) An employer shall file a completed Form 7727, Actuarial Study for Quasi-Governmental Employer Cessation with its resolution on or after April 1, 2020, but prior to May 1, 2021, or January 1, 2021 in the case of university or community college employers, with the executive director of the Systems.

(2) The employer shall submit the following documents with its Form 7727:

(a) Documentation of the alternative retirement program created by or being created by the employer for its employees, such as the determination letter issued by the Internal Revenue Service or a written description of the alternative retirement program;

(b) The employer's most recent five (5) audited financial statements and independent auditor's reports; and

(c) The employer's most recent five (5) Comprehensive Annual Financial Reports, if applicable.

(3) The employer shall submit with its Form 7727, an encrypted electronic file in a format prescribed by the Systems listing each current and former nonhazardous employee, employed in a full-time position as defined by KRS 61.510(21), who was employed during any period the employer participated in KERS, containing:

(a) Full name;

(b) Last known address;

(c) Date of birth;

(d) Social security number or Systems member identification number;

(e) Beginning date of employment;

(f) Date employment ended, if applicable;

(g) Sick leave balance;

(h) Beginning and ending dates of any active duty military service when the employee was not employed by the employer filing the Form 7727, if available; and

(i) Beginning and ending dates of any active duty military service when the employee was employed by the employer filing the Form 7727.

Section 5. (1) The employer shall pay the administrative costs incurred by the Systems for the actuarial study completed in accordance with the Form 7727 to determine the final cost, as well as all other administrative costs incurred for ceasing participation pursuant to KRS 61.522(3)(a).

(2) The employer shall pay \$10,000 as a deposit with the Form 7727.

(3) Systems shall place the deposit in a designated account and shall utilize the funds to pay the administrative costs of processing the employer's Form 7727.

(4) Systems shall charge a reasonable fee for its administrative costs associated with processing of the employer's Form 7727 and send an invoice to the employer upon completion of the actuarial study.

(a) Systems shall apply the deposit received pursuant to subsection (2) of this section to any administrative costs incurred by the Systems attributable to the employer's cessation in accordance with KRS 61.522(8).

(b) Following the application of the deposit to the outstanding administrative costs, Systems shall submit an invoice to the employer for the additional administrative costs and the employer

shall pay the invoice for the remaining administrative costs within thirty (30) days of the date of the invoice.

(5) If the total administrative cost is less than the deposit paid by the employer, Systems shall credit the remaining balance of the deposit to the employer.

Section 6. (1) Systems shall attempt to notify each nonhazardous employee identified on the list provided by the ceased employer that the employer is ceasing participation pursuant to KRS 61.522(8).

(2) For those eligible nonhazardous employees, the Systems shall provide notice informing the employee of the right to request an irrevocable refund, pursuant to KRS 61.522(3)(a)5., of their accumulated account balance as defined in KRS 61.510(41) by submitting a completed Form 1500, KRS 61.522 60-Day Transfer Request within sixty (60) days of June 30, 2021 to Kentucky Retirement Systems. The notice shall be sent no later than June 19, 2021.

(a) Systems shall send the notice to the active nonhazardous employees listed by the employer who has filed a Form 7727 on its most recent report required by KRS 61.675 submitted prior to the date the notices are mailed.

(b) The employer shall submit the name and contact information of each nonhazardous employee it hired between the completion of the Form 7727 and before June 30, 2021, within five (5) days of the date the employee begins working for the employer.

(c) A Form 1500 submitted on or before June 30, 2021, shall be void.

(d) A Form 1500 submitted after August 31, 2021, shall be void.

(e) The employee shall be employed by the employer who has filed a Form 7727 on June 30, 2021, to be eligible to request a refund of his accumulated account balance pursuant to KRS 61.522(3)(a)5.

(f) An employee who submitted Form 1500 to the Systems may rescind the form by submitting written notice to the Systems on or before August 31, 2021.

(g) If an employee requests a refund pursuant to KRS 61.522(3)(a)5., the employee's accumulated account balance shall be transferred to the employer's alternative retirement program pursuant to this section even if the employee terminates employment with the employer after June 30, 2021, unless the employee rescinds the Form 1500 on or before August 31, 2021.

(3)(a) The employer shall establish an alternative retirement program on or before August 31, 2021, as provided in KRS 61.522(3)(a)5.

(b) The employer shall submit the final plan documents for its alternative retirement program as well as an affirmative statement that the alternative retirement program does not include a defined benefit plan.

(c) The employer shall submit verification that it has established an alternative retirement program qualified under 26 U.S.C. 401(a) or 26 U.S.C. 403(b) that is eligible to receive direct trustee-to-trustee transfers of pre-tax and post-tax contributions and does not include a defined benefit plan. Systems shall accept one (1) of the following as verification that the employer has established a valid alternative retirement program:

1. A determination letter from the Internal Revenue Service providing that the alternative retirement program established by the employer is a qualified plan pursuant to 26 U.S.C. 401(a) or 26 U.S.C. 403(b) capable of accepting trustee-to-trustee transfers;

2. A letter from the employer's legal counsel certifying that the alternative retirement program satisfies the requirements of 26 U.S.C. 401(a) or 26 U.S.C. 403(b) capable of accepting trustee-to-trustee transfers; or

3. Other reliable verification as determined by the Systems.

(d) Refunds requested pursuant to KRS 61.522(3)(a)5. shall be transferred to the alternative retirement program established by the ceased employer by trustee-to-trustee transfer after August 31, 2021.

1. The alternative retirement program shall accept and separately account for post-tax employee contributions.

2. The ceased employer's legal counsel shall provide written certification that its alternative retirement program shall accept and separately account for post-tax employee contributions.

(e) If the ceased employer fails to establish an alternative retirement program pursuant to paragraph (a) of this subsection, the refund requests pursuant to KRS 61.522(3)(a)5. shall be void. The employees who filed the refund requests pursuant to KRS 61.522(3)(a)5. shall remain members of the system and shall be included in the full actuarial cost.

(4) Former employees of the ceased employer who are currently participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System, due to employment with a participating agency, shall not be eligible to take a refund of their accumulated account balance until terminating employment with the current participating employer.

(5) Current employees of the ceased employer who are also employed by another employer participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance until terminating employment with the participating employer.

(6) Current employees of the ceased employer on June 30, 2021, may request a refund pursuant to KRS 61.522(3)(a)5.

(7)(a) Former employees of the ceased employer who are not participating in State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance pursuant to KRS 61.522(3)(a)5.

(b) The account balance of former employees of the ceased employer who are not participating in State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System, but who were employed with the ceased employer on June 30, 2021, and who submitted a valid Form 1500 pursuant to this section, shall be transferred to the employer's alternative retirement program unless the employee rescinds the Form 1500 on or before August 31, 2021.

(8) The four (4) percent employer pay credit and applicable interest accrued shall vest as of June 30, 2021, for those nonhazardous employees who began participating on or after January 1, 2014, and who request a refund pursuant to KRS 61.522(3)(a)5.

Section 7. (1)(a) The employer shall continue to file reports and remit employer contributions on all employees in accordance with KRS 61.675 and 105 KAR 1:140 for creditable compensation paid through June 30, 2021.

(b) If the employer elects for nonhazardous employees to continue participation through the employer election, the employer shall continue to file reports in accordance with KRS 61.675 and 105 KAR 1:140. In addition, the employer shall continue to report all applicable pick up installments for pre-tax service purchases pursuant to KRS 61.552(14)(c). However, pursuant to KRS 61.522(8)(d)2., the employer shall not remit employer contributions for nonhazardous employees after June 30, 2021, as those amounts are factored into the cost calculation established by KRS 61.522(7).

(c) The employer shall continue to remit employer contributions for all hazardous employees.

(2)(a) If a member who is an employee of a ceased employer files for disability retirement benefits but does not establish a last day of paid employment prior to June 30, 2021, and does not continue participation, the Systems shall use June 30, 2021, as the member's last day of paid employment.

(b) If a member who is an employee of a ceased employer continues participation because of the employer election and files for disability retirement benefits, the member's last day of paid employment shall be established pursuant to KRS 61.510(32).

(3)(a) The ceased employer shall continue to pick-up payments for installment purchase of service for any employee who is purchasing service pursuant to KRS 61.552(14) and 105 KAR 1:150 through June 30, 2021.

(b) An employee that ceases participation in KERS on June 30, 2021, shall have sixty (60) days from the date of cessation to pay in full any outstanding balance on the installment purchase agreement pursuant to KRS 61.552(14) and 105 KAR 1:150.

Section 8. (1) Employees of a ceased employer shall comply with the provisions of KRS 61.590, 61.625 and 61.637.

(2) Employees of a ceased employer shall terminate employment with all participating employers of the State Police Retirement System, County Employees Retirement System, Kentucky Employees Retirement System and the ceased employer prior to retiring pursuant to KRS 61.590 or taking a refund pursuant to KRS 61.625.

(3)(a) Employees of a ceased employer shall comply with KRS 61.637 and 105 KAR 1:390 after retirement.

(b) The ceased employer shall certify that the employee seeking to retire or take a refund is terminating employment or has terminated employment with no prearranged agreement to return to work for the ceased employer.

Section 9. (1) Employees shall receive service credit for sick leave accrued pursuant to KRS 61.546 as of June 30, 2021.

(a) If the ceased employer participates in a sick leave program established in KRS 61.546 the employer shall report to the Systems the number of hours of each employee's accumulated sick leave as of June 30, 2021.

(b) Systems shall credit the months of sick leave service reported pursuant to this section to the employee's total service credit to determine the ceased employer's actuarial cost.

(c) If the ceased employer elects that nonhazardous employees hired prior to June 30, 2021, who began participating in the Systems prior to January 1, 2014, will continue participation pursuant to KRS 61.522(8)(d), then those employees shall continue to receive service credit for sick leave accrued pursuant to KRS 61.546 after June 30, 2021, while participating through the ceased employer.

(2)(a) Systems shall credit the months of military service pursuant to KRS 61.555 prior to June 30, 2021, and include the months in the calculation of the ceased employer's actuarial cost.

(b) If the ceased employer elects that nonhazardous employees hired prior to June 30, 2021, who began participating in the Systems prior to January 1, 2014, will continue participation pursuant to KRS 61.522(8)(d), then those employees shall continue to be able to obtain military service pursuant to KRS 61.555 if otherwise eligible.

Section 10. (1) The ceased employer shall pay or otherwise resolve all its invoices and correct all reporting in accordance with KRS 61.675 and 105 KAR 1:140 by July 25, 2021.

(2)(a) Systems shall provide the ceased employer with the amount of the full actuarial cost by sending a notice of actuarial cost and the report of the actuary to the employer.

(b) Systems shall provide the ceased employer with the payment amounts required if the ceased employer elects to pay the actuarial cost in installment payments.

(3)(a) The ceased employer shall elect on the Form 7728, Payment Election for Quasi-Governmental Employer Cessation whether to pay the actuarial cost of cessation by lump-sum payment or in installment payments not to exceed thirty (30) years from June 30, 2021.

(b) The Form 7728 shall be received in the retirement office on or before thirty (30) days after the date on which the Systems mailed the notice of actuarial cost and the report of the actuary to the ceased employer.

(c) A ceased employer intending to pay the full actuarial cost by lump-sum shall submit with the Form 7728 documentation of the source of the funds the employer intends to use to pay the full actuarial cost.

(d) A ceased employer intending to pay the actuarial cost by installment payment plan shall submit with the Form 7728 documentation of:

1. Source of funds to pay the installment payments;
2. List of real property owned by the ceased employer, including deeds of conveyance, title, all liens or encumbrances on the real property, and any current written contractual lease or rental agreement of the real property identified;
3. List of liabilities of the ceased employer; and
4. Inventory of all personal property owned by the ceased employer or in which the employer has an interest that may be used as collateral by the employer, including chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letters of credit rights, and money.

(4)(a) Ceased employers who elect to pay the full actuarial cost by lump-sum shall make the payment by June 30, 2022, pursuant to KRS 61.522(3)(a)7.

(b) If the lump-sum payment is not received by the Systems at the retirement office on or before June 30, 2022, then the ceased employer shall make installment payments and the payment amount shall be recalculated based upon this adjustment with interest added for fiscal year 2022-2023. The ceased employer shall also remit all outstanding installments payments.

(c) Systems shall notify any ceased employer who has not submitted the lump-sum payment on June 21, 2022, of the impending deadline and the consequences of failing to timely pay.

(5)(a) If the ceased employer elects to pay the actuarial cost of cessation in installment payments, the cost shall be financed by the Systems pursuant to KRS 61.522(8)(g).

(b) If the ceased employer elects for nonhazardous employees who began participating in the Systems prior to January 1, 2014, to continue participating in KERS, and the employer is not projected to pay the full actuarial cost in thirty (30) years, then the Systems shall adjust the payments so that the full actuarial costs are paid at the end of the thirty (30) year period.

(c) If the ceased employer elects for nonhazardous employees who began participating in the Systems prior to January 1, 2014 to cease participating in KERS, and the employer is not projected to pay the full actuarial cost in thirty (30) years, then the employer shall pay the amount financed through the Systems pursuant to KRS 61.522(8)(g)1. and no adjustments shall be made to the monthly payments nor shall additional amounts be charged after the thirty (30) year period.

(6)(a) Interest shall be assigned to the principal amount annually for both lump-sum and installment payment plans beginning on July 1, 2021. A ceased employer who elects to pay the actuarial cost by installments may at any time submit payments towards the remaining balance.

(b) If the employer elects to pay the costs in installment payments, the annual payments beginning on or after July 1, 2021, including interest will be calculated as a set dollar value and then divided into monthly installments.

(c) If the ceased employer submits more than the required payments for a fiscal year, the total cost will be reduced but the monthly installment amounts will remain unchanged because the monthly amounts are based upon the set dollar value of the annual payments. Pursuant to KRS 61.522(8)(g), interest amounts are separate from total cost and interest and interest attributable to the actuarial cost will not be calculated until the cost is finalized. However, any early or additional payments may reduce the number of payments required if the full actuarial cost is paid in less than thirty (30) years from June 30, 2021.

(7) Payments made prior to the notice of full actuarial cost shall be credited to the amount and considered early or additional payments pursuant to (6)(c) of this section.

Section 11. (1)(a) If a ceased employer elects to make installment payments, the Systems shall submit invoices to the employer for payments owed, which are not paid through the normal monthly reports.

(b) The employer shall remit payment to the Systems by the due date provided on the invoice.

(2)(a) If a ceased employer that elected to make installment payments is delinquent for ninety (90) days or more from the due date of an outstanding invoice, and the ceased employer elected for nonhazardous employees with participation dates prior to January 1, 2014, to continue participating, then the participation of those employees in KERS through the ceasing employer will be suspended until the ceased employer has remitted the required payments. The employees shall not earn service credit, including service credit purchased pursuant to KRS 61.552, or benefits in KERS through the ceased employer during the suspension period.

(b) Any employee contributions provided to the Systems will be held until the ceased employer remits the required payments.

(3) Systems shall notify the Finance and Administration Cabinet of any ceased employer that is delinquent for ninety (90) days or more in making installment payments pursuant to KRS 61.675(4)(c).

(4) Systems may file an action in Franklin Circuit Court to collect delinquent installment payments and attach general fund appropriations in order to satisfy the payments owed.

Section 12. (1)(a) Current and former employees of the ceased employer shall not be eligible to purchase service credit pursuant to KRS 61.552 after June 30, 2021, unless the current employee has continued participation in KERS because of the employer election.

(b) A current employee of a ceased employer continuing participation in KERS because of the employer election may purchase service credit pursuant to KRS 61.552 even if that service is related to employment with the ceased employer.

(2) Former employees shall not be eligible to purchase service credit related to employment with a ceased employer, pursuant to KRS 61.552 after June 30, 2021.

(3) A person eligible to purchase service credit pursuant to KRS 61.552 related to employment with the ceased employer, shall either complete the purchase or enter into a service purchase agreement with the Systems no later than June 30, 2021 unless the individual is a current employee of the ceased employer who has continued participation in KERS because of the employer election.

(4) A person may purchase service credit pursuant to KRS 61.552(20) if the service is not related to employment with the ceased employer, unless the person is a current employee that has continued participation in KERS because of the employer election.

(5) A former employee of a ceased employer who becomes employed with a participating employer after terminating employment with the ceased employer may purchase service credit pursuant to KRS 61.552 that is not related to employment with a ceased employer.

Section 13. If any due date in this administrative regulation or if an installment payment falls on a Saturday, Sunday, or day that the Systems is closed due to state holiday, the due date or time period deadline shall extend to the close of business of the next business day.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 7726, "Request for Estimated Cost of Voluntary Cessation from KERS under KRS 61.522(8)," August 2019;

(b) Form 7727, "Actuarial Study for Quasi-Governmental Employer Cessation", June 2020;

(c) Form 1500, "KRS 61.522 60-Day Transfer Request", November 2019; and

(d) Form 7728, "Payment Election for Quasi-Governmental Employer Cessation", June 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (46 Ky.R. 1997, 2391; eff. 6-2-2020; 47 Ky.R. 753, 1357; eff. 4-6-2021.)